

## Internal Revenue Service

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Date:

August 26, 2010

### Legend

USParent =

USSub =

Foreign Parent =

Foreign Sub =

State A =

State B =

Country C =

Year 1 =

Year 2 =

Year 3 =

Date 1 =

Month =

a =

b =

Dear :

We respond to a letter, dated April 22, 2010, requesting a ruling concerning a determination that a disaffiliation out of, and subsequent consolidation into, a consolidated group has not provided and will not provide “a federal tax savings,” for purposes of Section 5.14 of Rev. Proc. 2002-32, 2002-1 CB 959.

## FACTS

USParent, a State A corporation, is the common parent of an affiliated group of corporations (“USParent Affiliated Group”) under section 1504(a) of the Internal Revenue Code (“Code”). All of the stock of USParent is owned directly by Foreign Sub, a Country C corporation, a wholly owned subsidiary of Foreign Parent, a Country C corporation. USParent currently owns 100% of USSub, a State B corporation.

In Year 1, the USParent Affiliated Group filed a U.S. Federal income tax consolidated return (“USParent Consolidated Group”) that included USSub and its affiliated subsidiaries. On Date 1 of Year 2, for what has been represented to be a valid business purpose, USParent sold a shares of USSub common stock to Foreign Parent, which caused USSub and the affiliated group of corporations of which it was parent (“USSub Affiliated Group”) to deconsolidate from the USParent Consolidated Group. Following subsequent transactions, USParent owned only b% of USSub. In Month of Year 3, USParent acquired all of the common stock of USSub held by the public through a tender offer and a merger, and USSub and its affiliated subsidiaries again became part of the USParent Affiliated Group. USParent and USSub represent that both the disaffiliation and reaffiliation transactions were undertaken for valid business purposes.

USParent now plans to request an automatic waiver of the general rule of section 1504(a)(3)(A) of the Code under Rev. Proc. 2002-32, and include USSub and its affiliated subsidiaries in the consolidated return filed by the USParent Consolidated Group for Year 3. For this purpose, USParent requests a ruling that USParent and USSub will properly determine whether USSub’s disaffiliation in Year 2 and subsequent

consolidation into the USParent Consolidated Group in Year 3 has not provided and will not provide a “federal tax savings,” for purposes of Section 5.14 of Rev. Proc. 2002-32, by looking to whether the disaffiliation and subsequent consolidation have not provided and will not provide an overall net tax benefit that would not otherwise be secured or have been secured had the disaffiliation and subsequent consolidation not occurred, even if a tax benefit results for one isolated year. USParent is not requesting a ruling that USSub qualifies for the automatic relief provided under Rev. Proc. 2002-32. In addition, USParent is not requesting a ruling that the determination by USParent and USSub that the disaffiliation and subsequent consolidation have not provided and will not provide an overall net tax benefit that would not otherwise be secured or have been secured had the disaffiliation and subsequent consolidation not occurred is correct.

## REPRESENTATION

USParent and USSub represent that the net tax consequences for all years, taking into account the time value of money, of the disaffiliation and subsequent consolidation have not provided and will not provide an overall net tax benefit that would not otherwise be secured or have been secured had the disaffiliation and subsequent consolidation not occurred, although a tax benefit results in one isolated year.

## LAW

Section 1504(a)(3)(A) of the Code provides that if a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year that includes any period after December 31, 1984, and the corporation ceases to be a member of the group in a taxable year beginning after December 31, 1984, for periods after the cessation, the corporation (and any successor of the corporation) may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of the common parent) before the 61st month beginning after the first taxable year in which it ceased to be a member of the affiliated group. Section 1504(a)(3)(B) of the Code allows the Secretary to waive the application of section 1504(a)(3)(A) of the Code to any corporation for any period subject to such conditions as the Secretary may prescribe.

Rev. Proc. 2002-32 grants an automatic waiver of the general rule of § 1504(a)(3)(A) of the Code for taxpayers who meet its requirements. If a taxpayer qualifies for the automatic waiver, the process described in the revenue procedure is the exclusive means for obtaining a waiver of section 1504(a)(3)(A) of the Code. Section 5 of Rev. Proc. 2002-32 specifies the information and representations to be included in a request for an automatic waiver. Such information is subject to verification on examination. Section 5.14 of Rev. Proc. 2002-32 provides that the request must include a representation that the disaffiliation and subsequent consolidation has not provided

and will not provide a benefit of a reduction in income, increase in loss, or any other deduction, credit, or allowance (a federal tax savings) that would not otherwise be secured or have been secured had the disaffiliation and subsequent consolidation not occurred, including, but not limited to, the use of a net operating loss or credit that would otherwise have expired, or the use of a loss recognized on a disposition of stock of the deconsolidated corporation or a predecessor of such corporation. Section 5.14 of Rev. Proc. 2002-32 further provides that in determining whether the disaffiliation and subsequent consolidation provided or will provide a federal tax savings, the net tax consequences to all parties, taking into account the time value of money, are considered.

### RULING

USParent and USSub will properly determine whether USSub's disaffiliation in Year 2 and subsequent consolidation into the USParent Consolidated Group in Year 3 has not resulted and will not result in a "federal tax savings," for purposes of Section 5.14 of Rev. Proc. 2002-32, by looking to whether the disaffiliation and subsequent consolidation has not resulted and will not result in an overall net tax benefit that would not otherwise be secured or have been secured had the disaffiliation and subsequent consolidation not occurred, even if a tax benefit results for one isolated year.

### CAVEATS

No opinion is expressed about the tax treatment of any transactions under other provisions of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the transactions that are not specifically covered by the above ruling. Specifically, no opinion is expressed as to: i) the business purpose for the disaffiliation and subsequent consolidation of USSub; ii) whether the net tax consequences for all years, taking into account the time value of money, have not provided and will not provide an overall federal tax benefit, or whether the information submitted with the request is either accurate or sufficient to make such determination; or iii) whether USSub qualifies for the automatic relief provided for under Rev. Proc. 2002-32.

The ruling contained in this letter is based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This Office has not verified any of the materials submitted in support of the request for the ruling. Verification of the information and other data may be required as part of the examination process.

### PROCEDURAL MATTERS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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Mary E. Goode  
Senior Counsel, Branch 6  
Office of Associate Chief Counsel  
(Corporate)

cc: